



The Legal Battle between the D&H and the Pennsylvania Coal Company

By S. Robert Powell, Ph.D.

The anthracite coal mined by the Pennsylvania Coal Company in the Lackawanna and Wyoming Valleys of northeastern Pennsylvania was shipped to market over the PCC Gravity Railroad, between Port Griffith and Hawley. At Hawley, the coal was loaded into canal boats and shipped via the D&H Canal from Hawley to the Hudson River.

In order to maximize the amount of coal, both D&H and PCC, that could be shipped to the Hudson River via the D&H Canal, the D&H restructured its canal three times. With each revision the canal was made deeper and wider and capable of handling larger boats with increased tonnage of coal. (Following the third revision, 1848-1852, the canal was now 6 feet deep, with locks 90 feet long and 15 feet wide.)

In April 1857, the D&H, seeking to recover the additional tolls which it asserted the PCC owed the D&H due to the lowered costs resulting from the third enlargement, the D&H filed suit against the PCC. In court documents relating to this case, we read: "This action was commenced in April, 1857, to establish what has been the reduction in the cost of transportation, per ton of coal, on the plaintiffs' [D&H] canal, between Hawley, the point where the defendants' [PCC] coal enters the canal, and tidewater, produced by the enlargement of such canal, and by no other cause; and also to recover from the defendants, an 'additional toll,' a sum equal to one-half of such reduction upon the coal transported over such portion of the canal in the pleadings mentioned..."

On April 23, 1857, the New York Supreme Court, Ulster County, summoned The President, Managers and Company of the Delaware and Hudson Canal Company and The Pennsylvania Coal Company.

Pleadings and testimony were taken before J. H. Dubois and Henry Hogeboom, Referees. Schoonmaker & Hardenbergh (Edward H. Owen, William Curtis Noyes, and Elbridge T. Gerry, of New York; Amasa J. Parker and John H. Reynolds, of Albany; Jacob Hardenbergh of Kingston) were the attorneys for the plaintiffs (the D&H) and Wm. & B. Cutting (Charles F. Southmayd, John Ewen, Samuel J. Tilden*, and Lewis B. Woodruff, of New York; Charles P. Collier, of Hudson; and John K. Porter and Lyman Tremain, of Albany) were the attorneys for the defendants (the PCC).

Standard courtroom rules of examination were followed and objections were allowed, but since this was not a trial, the referees, who served not as judges, rather as referees, could not rule on the objections, which were made for the record and accumulated for later decision. In the course of these hearings 200 witnesses were called.

The D&H began in December 1857 by introducing expert witnesses, such as James McEntee and Russel F. Lord, who established the central claim that a 125-ton boat on the enlarged canal could transport coal for about 40 cents a ton less than the 50-ton boats in use after the second enlargement.

The hearings continued for more than four years. The final testimony was heard on May 17, 1861. The actual judgment was not entirely satisfactory to either party. In a decision handed down in 1863, the D&H was awarded 5 cents a ton additional toll for coal transported since July 28, 1853. The D&H gained about \$350,000 including interest, but lost over \$700,000 it had sought to recover from the PCC. Neither side was satisfied and each appealed, extending the conflict more than a decade longer.

The proceedings of these hearings filled nearly five thousand pages, which were published in eight volumes, in New York City, by W. C. Bryant & Co., Printers, 41 Nassau St., corner Liberty Street.

Before the present digital age, a D&H or PCC historian who was interested in reading those eight volumes could only have done so through many weeks of in-person visits to libraries such as the New York Public Library. Those eight volumes have now been digitized and are accessible to all on-line. In the past several months, we have read all eight volumes of the pleadings and testimony in the D&H/PCC legal proceedings. Our colleague, Larry Rine, of West Lebanon, NH, is now reading those eight volumes and is presently working on an index to those proceedings.

Having read all eight of those volumes, which constitute an immense historical archive of never-before- published primary data about the Delaware and Hudson Canal and its operations, it is very clear that none of the many historians who have written on the Delaware and Hudson Canal over the years has read the complete transcript of the D&H/PCC legal proceedings, 1857-1861. That being the case, those among us who are interested in the history of the D&H Canal must now, in the years ahead, either incorporate into the existing published histories of the D&H

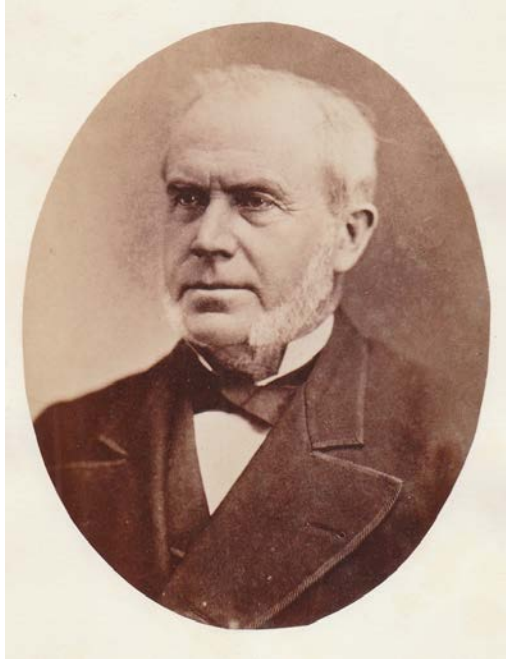
Canal the immense body of never-before published data about the D&H Canal and its operations that is recorded in the D&H/PCC court proceedings, or write new books on the Delaware and Hudson Canal and its operations.

* Tilden was elected governor of New York in 1874 and was the Democratic candidate for U. S president in 1876. He studied law at NYU and was admitted to the bar in 1841. He was an extremely successful lawyer. He died in 1884. In his will he left 3 million dollars toward the establishment a free public library in New York City. In 1895 this trust was joined with the Astor and Lenox libraries to form the New York Public Library. The eight volumes of the D&H/PCC court dispute now in the New York Public Library were formerly in the Tilden Library.

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Pennsylvania Coal Company's passenger car, *Pioneer*, on display in Hawley, in 1936. Photo by Helen Loomis Russell, in the Russell Homestead photo archive, Carbondale. There were two passenger trains on the line, one each way (Hawley/Dunmore/Hawley) daily, except Sunday. The cars were side-seated, heated by a coal stove, and illuminated by a pair of oil lamps. A one way trip took a little over 3 hours and cost one dollar.



John B. Smith, General Manager of the Pennsylvania Coal Company's Gravity Railroad, 1850-1885. Photo in the collection of the Carbondale Historical Society.